



Haris Ginis
Technical Manager
Leave to Construct Applications
Regulatory Affairs

tel 416-495-5827
haris.ginis@enbridge.com
EGIRegulatoryProceedings@enbridge.com

Enbridge Gas Inc.
500 Consumers Road
North York, Ontario
M2J 1P8

VIA EMAIL and RESS

March 12, 2024

Nancy Marconi
Registrar
Ontario Energy Board
2300 Yonge Street, Suite 2700
Toronto, Ontario, M4P 1E4

Dear Nancy Marconi:

**Re: Enbridge Gas Inc. (“Enbridge Gas”)
Ontario Energy Board (“OEB”) File No. EB-2022-0285
Panhandle Regional Expansion Project – Early Access
Reply Submission**

In accordance with the OEB’s Procedural Order No. 3, dated February 15, 2024, enclosed please find the Reply Submission of Enbridge Gas.

If you have any questions, please contact the undersigned.

Sincerely,

Haris Ginis
Technical Manager, Leave to Construct Applications

c.c. Jonathan Myers (Torys LLP)
Charles Keizer (Torys LLP)
Zora Crnojacki (OEB Staff)
Intervenors (EB-2022-0285)

ONTARIO ENERGY BOARD

IN THE MATTER OF the Ontario Energy Board Act, 1998, S.O. 1998, c. 15, Schedule B, and in particular, section 98(2) thereof;

AND IN THE MATTER OF an application by Enbridge Gas Inc. for an Order or Orders authorizing entry onto certain properties to complete surveys and examinations that are necessary for fixing the site of the hydrocarbon line that it has proposed to construct in its application for leave to construct the Panhandle Regional Expansion Project in EB-2022-0157;

ENBRIDGE GAS INC.

REPLY SUBMISSIONS

EB-2022-0285

March 12, 2024

A. Introduction

On June 16, 2023, Enbridge Gas Inc. (“Enbridge Gas”) filed an application with the Ontario Energy Board (“OEB”) pursuant to section 98(2) of the *Ontario Energy Board Act, 1998* (the “OEB Act”) for an order authorizing Enbridge Gas and its officers, employees and agents to enter onto certain lands, consisting of three properties situated at the intended location of certain parts of the natural gas pipeline that it has proposed in EB-2022-0157, and to make such archaeological, environmental and engineering surveys and examinations as are necessary to fix the site of its proposed pipeline on such lands (the “Early Access Application”).

The application in EB-2022-0157 (the “LTC Application”) is for leave to construct approximately 19 km of Nominal Pipe Size (“NPS”) 36 natural gas pipeline and associated facilities needed to reinforce the Panhandle System in southwestern Ontario (the “Panhandle Regional Expansion Project”), pursuant to section 90 of the OEB Act. A decision on the LTC Application is currently pending from the OEB. The properties that are the subject of the Early Access Application are at the southwestern end of the Panhandle Regional Expansion Project route, at Richardson Sideroad, where Enbridge Gas has proposed to construct a tie-in station to connect to the existing Panhandle System. Of the three properties affected by the Early Access Application, one is owned by Middle Road Farms Limited and the other two are owned by Courey Corporation, and both companies (the “Courey Companies”) are under common control.

Enbridge Gas, in the LTC Application, has proposed to start construction of the Panhandle Regional Expansion Project in 2024 to achieve an in-service date of November 1, 2024. Enbridge Gas has requested an OEB order authorizing early access to the three properties by no later than April 1, 2024.

The Courey Companies are the only intervenors in the proceeding. Only OEB staff filed interrogatories in this proceeding, and only OEB staff, along with Enbridge Gas, filed submissions on the need for an oral hearing. Both OEB staff, as well as the Courey Companies, have filed submissions. The following are Enbridge Gas’s responding submissions.

B. Responding Submissions

For the reasons that follow, it is Enbridge Gas’s submission that the Early Access Application should be approved as filed, subject to minor revisions to the proposed Conditions of Approval as set out below.

1. Response to OEB Staff Submissions

In their submissions, OEB staff summarizes various elements of the Early Access Application, including (a) the purpose and nature of the surveys and examinations to be performed on the subject properties and the associated timing considerations and requirements; (b) the efforts made by Enbridge Gas to secure both permanent land rights and early access rights for the Panhandle Regional Expansion Project, and the status thereof, both generally for the project and specifically with respect to the three Courey Companies properties; and (c) the Conditions of Approval that Enbridge Gas proposed if it is granted early access to the three Courey Companies properties.

Based on the foregoing, OEB staff:

- confirmed that Enbridge Gas has filed a proposed project location map, which was filed in the LTC Application, in satisfaction of subsection 98(2)(a) of the OEB Act;
- agreed that the OEB is authorized to issue an order granting early access rights to Enbridge Gas in respect of the Courey Companies properties under section 98(2) of the OEB Act;
- identified no concerns with the proposed activities or the timing of the activities, which it acknowledged were required by various government entities;
- recognized that Enbridge Gas has made efforts to negotiate with the Courey Companies and offered the Courey Companies the same form of Early Access Agreement that was offered to all other landowners along the proposed route of the Panhandle Regional Expansion Project;
- agreed for the most part with the Conditions of Approval proposed by Enbridge Gas, subject to certain minor edits proposed by OEB staff and discussed below; and, therefore
- supports Enbridge Gas's application for approval of early access to the three affected properties.

OEB staff proposed three minor edits to be made to the Conditions of Approval proposed by Enbridge Gas. First, OEB staff suggested that certain duplicated text in the proposed Conditions of Approval be deleted. Second, OEB staff suggested replacing references to the "Board" with "Ontario Energy Board". Third, OEB staff suggested that section 5 "Communication with the Ontario Energy Board" be revised by replacing parts 5.1, 5.2 and 5.3 with the following:

5.1 Enbridge Gas shall designate one of its employees as project manager who will be the point of contact for these conditions and shall provide the employee's name and contact information to the Ontario Energy Board and to all affected landowners and shall clearly post the project manager's contact information in a prominent place at the construction site.

Enbridge Gas takes no issue with OEB staff's proposed edits to the Conditions of Approval.

2. *Response to the Courey Companies' Submissions*

Notwithstanding that the Courey Companies filed submissions on February 29, 2024, raising various concerns about the Early Access Application, Enbridge Gas notes that discussions between Enbridge Gas and the Courey Companies are ongoing, have been progressing, and could potentially result in a comprehensive negotiated agreement that includes early access rights in the near future. If and when any agreement is finalized, Enbridge Gas will notify the OEB. Until such time, Enbridge Gas continues to require the relief requested in the Early Access Application within the timeframe specified therein.

Enbridge Gas takes issue with several aspects of the Courey Companies submissions, as follows.

First, in the introduction of their submissions, the Courey Companies state that “The stated purpose of the early access application was expanded to read . . .” This is not correct. The stated purpose of the Early Access Application as originally filed on June 16, 2023, and as updated on December 8, 2023 was identical, as evidenced by the identical language in Exhibit B-1-1, paragraph 21 of each version of the Early Access Application. The updated version, however, included a footnote regarding timing, indicating that the specific need for early access by April 1, 2024, is for the purpose of addressing certain archaeological requirements from the Ministry of Citizenship and Multiculturalism (MCM).

Second, in their submissions the Courey Companies assert that “In the absence of a decision granting leave to construct, access to the subject properties is premature” and “access . . . should only be granted at such time as leave to construct is granted”. Respectfully, this is not correct. The Early Access Application has been filed pursuant to section 98(2) of the OEB Act. The purpose of this section is to enable a proponent of a project, for which leave to construct is pending, to obtain authorization from the OEB for early access to a property to complete surveys and examinations on such property that are necessary for fixing the site of the project in respect of which leave to construct is pending. In fact, once leave to construct is granted there is no further need to obtain such authorization pursuant to section 98(2) because the same rights would be available automatically as a result of having been granted leave to construct, pursuant to section 98(1)(i) of the OEB Act. As such, the Courey Companies assertion, if true, would render section 98(2) meaningless, and is therefore incorrect.

While Enbridge Gas agrees with the Courey Companies that the need for early access would become moot should leave to construct be denied, Enbridge Gas does not agree that the OEB should delay issuing a decision on this Early Access Application until such time as it issues a decision on the LTC Application. This is because if the latter is approved, not providing the early access rights by the date requested will compromise Enbridge Gas’s ability to put the Panhandle Regional Expansion Project into service by November 1, 2024.

Third, the Courey Companies express concerns about the impacts on farming operations, the ability to plan farming activities and the risk of farming losses due to performance of the planned surveys, examinations and testing activities that would be undertaken on their properties, particularly having regard to the timing of such activities in relation to the farming season. Furthermore, the Courey Companies argue that if the Early Access Application is granted, this will “deprive the Courey Corporations of farming revenue with no assurance that such losses will be offset within the context of an expropriation having regard to the fact that no such process has been initiated”.

In response to these concerns, Enbridge Gas first notes that its land agents began meeting individually with all landowners along the route of the proposed pipeline to discuss the project, construction, the acquisition of land rights and compensation in January 2022.¹ As such, two full farming seasons have passed, during which Enbridge Gas would have had greater flexibility in terms of the timing for performing the required surveys and examinations on the Courey

¹ Early Access Application, Exhibit B-1-1, para. 15.

Companies' properties if the landowners were willing to provide such early access rights on a negotiated basis. Such flexibility in timing is no longer available without materially impacting the project schedule.

Second, Enbridge Gas notes that effectively the same rights to compensation apply to the granting of rights for early access as they do to the granting of rights to expropriate. Specifically, section 98(6) of the OEB Act states that "Any damages resulting from an entry onto land carried out . . . under an order made under subsection (2) . . . shall be determined by agreement or, failing agreement, in the manner set out in section 100". Section 99 deals with expropriation. Section 100 provides that "If compensation for damages is provided for in this Part [which includes Section 99] and is not agreed on, the compensation shall be determined by the Ontario Land Tribunal under the *Expropriations Act* . . ." As such, if the Early Access Application is granted, the Courey Companies would not be deprived of the opportunity to be appropriately compensated for reasonable farming losses.

Based on the foregoing, Enbridge Gas submits that the Early Access Application should be approved as filed, subject to minor revisions to the proposed Conditions of Approval as proposed by OEB staff and accepted herein.

All of which is respectfully submitted this 12th day of March 2024.



Jonathan Myers, Torys LLP

Legal Counsel to Enbridge Gas